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7 UNITED STATES BANKRUPTCY COURT

8 NORTHERN DISTRICT OF CALIFORNIA (SAN JOSE)

9 In re: CHAPTER 13
10 TIMOTHY O. AVERY AND JULIE S. Bankruptcy Case No. 11-52363 SLJ
SCOPAZZI,
11
12 Debtors.
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16
17

**MOTION TO AVOID JUDICIAL
LIEN IMPAIRING DEBTORS'
EXEMPTIONS**
Date: none set
Time: none set
Location: none set
Judge: Hon. Stephen L. Johnson

18 TIMOTHY O. AVERY AND JULIE S. SCOPAZZI, Debtors herein, respectfully
19 represent:

20 1. The case was commenced by the filing of a Voluntary Petition for relief under
21 Chapter 13 of the Bankruptcy Code on March 12, 2011. Devin Durham-Burk was appointed
22 Chapter 13 Trustee.

23 2. This Motion is brought pursuant to 11 U.S.C. §522(f)(1) and Fed. R. Bankr. P.
4003(d) to avoid a judicial lien against the Debtors' residence.

25 3. Among the assets of the bankruptcy estate was the Debtors' residence located at
26 23000 Mountain Charlie Road, Los Gatos, California (the "Property").

27 4. The following Abstract of Judgment was recorded against Debtors' Property and
28 constitutes a judicial lien thereon: On February 3, 2011, FIA Card Services, N.A. recorded an

1 Abstract of Judgment in the amount of \$44,109.90 with the Santa Clara County Recorder, as
2 document number 21072217 of the official records. A copy of the Abstract of Judgment is
3 attached to Debtors' Declaration In Support of Motion to Avoid Judicial Lien Impairing
4 Debtors' Exemptions, marked as Exhibit "A", and is incorporated herein by reference.
5

6 5. On the date that the Debtors filed their Chapter 13 Petition, the Debtor's
7 Property had a fair market value of \$740,000.00. Attached as Exhibit "B" to Debtors' declaration
8 is a copy of the Schedule A - Real Property filed by the Debtors and is incorporated herein by
reference.
9

10 6. In addition to the lien recorded by FIA Card Services, N.A, on the date that the
11 Debtors filed their Chapter 13 Petition, the Property was encumbered by the following liens, as
12 described in the Schedule D - Creditors Holding Secured Claims filed by the Debtors, a copy of
13 which is attached as Exhibit "C" to Debtor's declaration and is incorporated herein by reference:
14

15 a. First deed of trust by Bayview Home Loans in the amount of
16 \$632,000.00.
17

18 b. Second deed of trust by Wells Fargo Home Loans in the amount of
19 \$129,588.00.
20

21 7. The existence of the judicial lien as recorded by FIA Card Services, N.A impairs
22 exemptions to which the Debtors would have been entitled under 11 U.S.C. §522(b), in that the
23 Debtors claimed an exemption on their residence pursuant to California Code of Civil Procedure
24 section 703.140(b)(5), as shown on Schedule C - Property Claimed as Exempt - Amended,
25 attached as Exhibit "D" to Debtors' declaration and incorporated herein by reference.
26

27 8. Under California Code of Civil Procedure section 703.140(b)(5), the Debtors are
28 entitled to a "wild card" exemption in the amount of \$23,250.00. In the present case, Debtors
claimed an exemption under California Code of Civil Procedure section 703.140(b)(5) of \$1.00 on
their residence.

29 9. After subtracting the total value of first and second deeds of trust from the value of
the Property, there remains no equity in the Property.
30

10. Therefore, the facts establish that the Abstract Judgment held by FIA Card Services, N.A. impairs the Debtors' exemption and is voidable as against the Property.

WHEREFORE, Debtors pray for an order:

1. That this Court enter an Order, pursuant to Bankruptcy Code section 522(f), for the cancellation and avoidance of the Abstract of Judgment recorded by FIA Card Services, N.A. against the Property; and

2. For such other and further relief as may be just.

Dated: May 5, 2011

Respectfully Submitted,

/s/ Anita L. Steburg
ANITA L. STEBURG
Attorney for Debtors